

### **INTERPRETIVE LETTER NO. 98-03 (May 6, 1998)**

**If a bank merges with another bank and thereby acquires title to the other bank's residual other real estate owned ("OREO"), the 10 year OREO holding timetable is reset. Furthermore, the Office of Banks and Real Estate no longer has the authority to grant extensions for banks to hold OREO.**

This letter responds to your recent inquiry regarding Bank's other real estate owned ("OREO"). You have asked the Office of Banks and Real Estate ("Agency") whether we would grant the Bank an extension to hold its OREO beyond the 10 year limit contained in the Illinois Banking Act ("Act"). You also wanted the Agency to clarify how a bank merger affects the statutory OREO holding period.

Your first question regards whether the Agency would consider granting the Bank an extension under the newly revised OREO provisions in the Illinois Banking Act ("Act"). Before 1997, Section 5(9) of the Act permitted a bank to hold OREO for five years, or for a longer period of time if given an extension by the Agency. 205 ILCS 5/5(9). However, Public Act 90-301 amended Section 5(9) last year to provide for a 10 year OREO retention period and to specifically eliminate the provision which authorized the Agency to grant requests for extensions of holding time beyond the 10 year limit. It is therefore our opinion that the Agency no longer has the authority to grant extensions for banks to hold OREO.

Your second question involved the effect of a merger on the OREO holding period. In your case, Bank2 merged into the Bank on January 31, 1997. At the time of the merger, Bank2 had OREO it had acquired in 1982 and had permission to retain by the Commissioner until 1998. Because Section 5(9) of the Act permits a bank to hold OREO for 10 years "after acquiring title" to that OREO, the Agency takes the position that the OREO holding timetable is reset if a bank merges with another bank and thereby acquires title to the other bank's residual OREO. Thus, Bank now has 10 years from the merger date (i.e. until January 31, 2007) in which to divest its OREO. Nonetheless, the Bank should divest its OREO as soon as commercially practicable since Agency examiners will be reviewing the Bank's diligence in that regard during examinations.

We trust that this letter responds to your inquiry. Should you have any additional questions, please do not hesitate to contact us.

### **Extended Summary for Interpretive Letter No. 98-03**

Because Section 5(9) of the Illinois Banking Act permits a bank to hold other real estate owned ("OREO") for 10 years "after acquiring title" to that OREO, the Office of Banks and Real Estate ("Agency") takes the position that the OREO holding timetable is reset if a bank merges with another bank and thereby acquires title to the other bank's residual OREO. Public Act 90-301 amended Section 5(9) last year to provide for a 10 year OREO retention period and to specifically eliminate the provision which authorized the Agency to grant requests for extensions of holding time beyond the 10 year limit. It is therefore our opinion that the Agency no longer has the authority to grant extensions for banks to hold OREO.